

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 31999
Docket No. MS-30848
97-3-92-3-719**

The Third Division consisted of the regular members and in addition Referee Dana E. Eischen when award was rendered.

(Ronald Collins

PARTIES TO DISPUTE: (

(Union Pacific Railroad Company

STATEMENT OF CLAIM:

"Mr. Collins claims that he became a protected employee of the Union Pacific Railroad between his dates of employment from 1980 through 1989, and as such is entitled to continuation of pay benefits, reinstatement, and fringe and retirement benefits, though he was placed on furlough. The railroad has denied all of his claims and alleges that he did not become a protected employee and has no further benefits coming."

FINDINGS:

The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee within the meaning of the Railway Labor Act, as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

Parties to said dispute were given due notice of hearing thereon.

Section 1(b) of Article I of the Agreement states:

**"Employees assigned to a regular position or to a
Guaranteed Extra Board on May 16, 1980, having less than**

three (3) years of continuous employment relationship in the clerical craft on May 16, 1980, will become protected employees on the first of the month immediately following the month in which they acquire three (3) years continuous employment relationship in the clerical craft, unless they are not so assigned on the date they are eligible to become protected employees, in which event they will become protected employees on the first of the month immediately following the month when recalled to service and assigned to a regular position or to a Guaranteed Extra Board in accordance with existing rules of the Clerks' Agreement."

Claimant was hired and assigned to a clerical position in Carrier's Salt Lake City facility on March 4, 1980. Claimant worked a number of extra or unassigned clerical positions in Salt Lake City, until being furloughed on October 2, 1984, as a non-protected employee.

In August 1986, Claimant was recalled and assigned to a CMS Crew Dispatcher Trainee position. However, Claimant failed to pass the initial qualifying test, and on September 1, 1986, he was again furloughed and placed on a list of unprotected employees.

In accordance with Rule 18, applicable to all furloughed employees, Claimant filed his name and address with Carrier in order to protect his seniority and avail himself of future work opportunities. However, Rule 18 (d-2) places an additional obligation on non-protected furloughed employees. That provision states that non-protected employees, who are not recalled for a bulletined clerical position within a period of two years from the date of furlough, "shall forfeit service and seniority rights, if within that two year period, they fail to notify, in writing, the proper Carrier official of their desire to be recalled to a bulletined position in the zone."

During the two-year period following his second furlough, Claimant backfilled on short vacancies for five or six weeks at a time, but he never was, in the words of Rule 18 (d-2) recalled for a bulletined clerical position, nor, in the words of Rule 1 (b), supra, "recalled to service and assigned to a regular position or to a Guaranteed Extra Board in accordance with existing rules of the Clerks' Agreement." Relieving a regularly assigned employee for short vacancies e.g., vacations, is not the same as being recalled

from furlough and assigned to a regular bulletined position or to a Guaranteed Extra Board position.

After he failed to notify the proper Carrier official, as required by Rule 18 (d-2), Claimant's name was removed from the clerical seniority roster, effective February 15, 1990. On October 17, 1991, Claimant's private attorney filed a claim against Carrier for "failure to pay Mr. Collins benefits to which he is entitled," including: continuation of pay benefits from the time he was furloughed, reinstatement to a job with the railroad, unpaid sick leave of approximately 30 days, and any unpaid accrued vacation pay, severance pay, and all accrued and vested retirement benefits.

Carrier denied the claim maintaining that Claimant's name was properly removed from the clerical seniority list on February 15, 1990, as a result of his failure to comply with Rule 18(d-2). Carrier went on to note that Claimant also worked for a brief period of time as a student Switchman/Brakeman at Portland, Oregon. However, Claimant was unable to pass the requisite rules test following his training in August, 1988, and therefore, did not acquire a seniority date in train and engine service. With respect to any monetary benefits to which Claimant was allegedly entitled, Carrier asserted that at the time of his furlough, Claimant had no unused sick time entitlement, and was paid in full for any unused vacation. Finally, Carrier noted that Claimant was not entitled to any severance pay from either the clerical ranks, or as a student Switchman/Brakeman, and would not have been eligible for any separation benefits.

The language contained in Rule 18 (d-2) clearly and unambiguously imposes upon a furloughed non-protected employee who is not recalled to a bulletined position within two years an obligation to reaffirm in writing his continued interest in being recalled. Failure to comply with this requirement works a waiver of recall rights, a loss of seniority and a severance of the employment relationship. The result may be Draconian, but the language is clear and this Board has no authority to rewrite the contract or to ignore the plain and unambiguous language of Rule 18 (d-2). Claimant asserted that he "requested reinstatement in any area of operations of Union Pacific," but there is no showing that he did so in the prescribed form or within the prescribed time limits of Rule 18 (d-2). Based on the foregoing, this claim must be denied.

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AWARD

Claim denied.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) not be made.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Dated at Chicago, Illinois, this 6th day of May 1997.